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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,395	07/03/2003	William M. Appling	ANGIO P-32/500622.20045	4468
7590 08/20/2004			EXAMINER FARAH, AHMED M	
Harry K. Ahn, Esq. Reed Smith LLP 599 Lexington Avenue New York, NY 10022			ART UNIT 3739 PAPER NUMBER	

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/613,395

**Applicant(s)**

APPLING ET AL.

**Examiner**

Ahmed M Farah

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-7 are objected to because of the following informalities: the preamble of claim 1 recites a "device adapted to be used with an optical fiber." However, although the optical fiber is not positively recited in the claim 1, most of the dependent claims positively recite the optical fiber and/or its use. Examiner suggests that the optical fiber is positively recited in independent claim 1. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller U.S. Patent No. 5,725,521.

Mueller discloses a transmyocardial revascularization apparatus and methods of use, the apparatus comprising: a catheter device comprising at least one optical fiber **54** (see Figs. 3 and 4); a first tube, **58, 106**, surrounding the optical fiber, and second tube, **50,102**, surrounding the first tube (see Figs. 3, 5A, respectively); and a spacer **70** arranged near the distal end of the optical fiber and operable to position the distal end of said optical fiber away from the blood vessel as presently claimed (see Fig. 4).

As to claims 4, 5, 7, 10, 11, and 13-16, the spacer has a plurality of ribs, the ribs extending in a radial direction into a deployed state as claimed (see Fig. 6B).

As to claims 17 and 18, the spacer includes a balloon positioned near the distal end of the optical fiber (see Fig. 6A).

4. Claims 1-3, 6, 8, 9, 12 and 17-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kittrell et al. U.S. Patent No. 5,693,043.

Kittrell et al disclose an endovascular laser treatment device and methods of use, the device comprising: a plurality of optical fibers **20**; a spacer **176** arranged near the distal end of the optical fibers; a first tube adapted to receive the optical fibers; and a second tube surrounding the first tube, the spacer being arranged near the distal portion of the second tube as presently claimed (see Figs. 11A, 18, and 24).

As to claims 17 and 18, the spacer includes a balloon positioned near the distal end of the optical fiber (see Fig. 18).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

- U.S. Patent No. 5,188,635 to Radtke discloses an endovascular laser catheter comprising: at least one optical fiber, a spacer having a plurality of ribs, and lumens/tubes arranged to receive the optical fiber and the spacer (see Fig. 2).

- U.S. Patent No. 5,643,253 to Baxter et al. a laser catheter device comprising: an optical fiber, a spacer having a plurality of ribs, and lumens/tubes arranged to receive the optical fiber and the spacer (see Fig. 1).
- U.S. Patent No. 6,561,998 to Roth et al. a laser catheter device comprising: an optical fiber, a spacer having a plurality of ribs, and lumens/tubes arranged to receive the optical fiber and the spacer (see Figs. 9a-9c and 10a-10c).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Thru. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

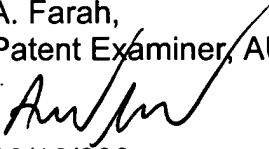
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you have questions on access to the Private PAIR system, contact the Electronic  
Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,  
Patent Examiner, AU 3739



08/16/200